STATE OF MICHIGAN

COURT OF APPEALS

NANCY TATE,

Plaintiff-Appellee,

v

MILONAS PROPERTIES, LLC,

Defendant-Appellant.

UNPUBLISHED
June 13, 2006

No. 266054
Kalamazoo Circuit Court
LC No. 05-000033-NO

Before: O'Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's denial of its motion for summary disposition. We reverse. This "black ice," slip-and-fall case arose when plaintiff was crossing defendant's parking lot on her way into work. The parking lot appeared wet, not icy, and plaintiff did not notice any "black" ice adhering to the pavement under a thin layer of water until she slipped on it, breaking her ankle. Her employer leased the premises from defendant and paid plaintiff workers compensation benefits.

Defendant argues that even if the ice were not open and obvious or if it had special aspects making it unreasonably dangerous, plaintiff failed to present any evidence that defendant had actual or constructive notice of the dangerous condition. We agree. "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). This duty does not extend to the protection of invitees from open and obvious dangers. *Id*. The duty also only arises when the danger is attributable to the invitor's negligence, or if the invitor had actual or constructive knowledge of its existence. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 706-707; 644 NW2d 779 (2002).

The exhaustive meteorological evidence presented by defendant evidenced that the temperature in the area was above freezing on the morning plaintiff fell. Plaintiff admitted that the parking lot was free of snow, and she did not detect any slippery areas walking from her car to the icy area where she fell. According to plaintiff, the parking lot looked wet, not icy. Plaintiff presented extensive evidence that the slippery condition was not readily detectable, even from the vantage point of one walking on its surface, so she fails to demonstrate any reason to attribute notice of the condition to defendant. Plaintiff also failed to present any evidence that the property owner had any actual knowledge that the lot was icy.

Nevertheless, the trial court found that defendant potentially had constructive notice of the lot's icy condition because plaintiff's employer, Nina Clark, had found the lot icy and slippery when she arrived at work roughly two hours before plaintiff. However, nothing in the record indicates that Clark was defendant's agent or had any other legal relationship that would make her acts and knowledge attributable to defendant. Moreover, the record does not reflect that Clark ever notified defendant of ice on the lot, which corresponds with Clark's equivocating deposition testimony about whether she found the parking lot icy or merely wet when she arrived that morning. The record is clear that Clark, and perhaps another tenant, used and possessed the parking lot, so plaintiff fails to demonstrate that defendant, as an absentee landlord, should have inspected and discovered the lot's dangerous condition without the benefit of any notice or complaint from its tenants. See *Little v Howard Johnson Co*, 183 Mich App 675, 678; 455 NW2d 390 (1990). This lack of possession reveals other serious flaws in plaintiff's case, but these issues were not addressed in this appeal, and our disposition renders them moot.[1] Under the circumstances, defendant did not have actual or constructive notice that the dangerous condition existed, so the trial court erred by denying its motion for summary disposition.

Reversed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kurtis T. Wilder

[1] The record indicated that Clark knew of the condition and was in possession and control of the parking lot, putting her in the best position to prevent the harm. *Little*, *supra* at 678-679; *Derbabian*, *supra* at 705. We can only assume that plaintiff was prevented from suing Clark by application of the workers compensation act's exclusive remedy provision. In any event, plaintiff's claim against defendant for the condition of property it does not possess or control is tenuous, and its lack of notice regarding the property's condition is fatal.